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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4439 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

H B NADANI

Versus

GUJARAT HOUSING BOARD

Appearance:

1. Special Civil Application No. 4439 of 1987

MR MUKUND M DESAI for Petitioner No. 1-2,5-11,13-17,19-20

DELETED for Petitioner No. 3-4,12,18,21

MR RAJESH K SAVJANI for Petitioner No. 22

MRS KETTY A MEHTA for Respondent No. 1

MR HS MUNSHAW for Respondent No. 1

DELETED for Respondent No. 2

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 04/08/2003

ORAL JUDGEMENT

1. By means of this petition, 22 petitioners sought for the direction to the respondent for allotment by way of sale on higher purchase basis the quarters occupied by the petitioners in different flats in Ranjit Nagar at Jamnagar on the analogy of the Government Resolution dated 18.02.1975 hence the petitiners moved their applications which had been made in pursuance of the advertisement dated 18.02.1976. This petition was dismissed for non prosecution vide order dated 29.08.2000. Later on, this petition was restored only on the behalf of petitioner no.22 - Mr.I.M. Nehlani, D/11, Flat no.379, Ranjitnagar, Jamnagar. It is ascertained that the petitioners are residing in the flat of the Housing Board whose flats were initially constructed for the public at large. But later on, on the representation of the employees, part of the flats were earmarked for the employees of the board, pursuant to the advertisement dated 18.02.1976 published by the board, the petitioners applied for allotment on hire purchase system.

2. At the first instance, those premises were allotted to the petitioners on rental basis. Thereafter, the Gujarat Housing Board took policy decision for alloting the same on the hire purchase basis subject to conditions mentioned in the Resolution and the higher purchase system was published by the Gujarat Housing Board. However, since the employees were residing in the rented premises, hence they are required to give benefits of higher purchase system regarding those rented premises and the petitioner made an application for the benefit of the scheme, but his application was not processed on the ground that the petitioner was the employee of the Housing Board and those premises were constructed for the purpose of public at large. Hence, the petitioner was not entitled for the allotment of that premises on the basis of higher purchase system. The second ground is that the petitioner was having property provided by the Gujarat Housing Board at another place at Rajkot. Hence he is not entitled for any allotment of the premises on the basis of the higher purchase system.

3. The learned counsel for the petitioner states on the basis of the averments made in the rejoinder affidavit, that he has no other property at Rajkot as alleged by the Gujarat Housing Board in the affidavit-in-reply as well in Civil Application. Now the question that arises before this Court is whether the petitioner is entitled for the allotment on the basis of higher purchase system to premises which was allotted on

the rented basis, as he was serving at Jamnagar. He also relied on two Resolutions dated 05.04.1989 and subsequent amended Resolution dated 04.04.1990. He claims that he is entitled for the allotment of the rented premises on the basis of higher purchase system. As the matter relates to disputed question of facts, as to whether the petitioner was allotted any other premises at Rajkot and whether the petitioner is entitled for the benefits of the Resolution of the Board, this Court cannot exercise its jurisdiction for deciding the matter in hand. Hence, at the consensus of the learned counsel for the parties, it is desired that the petitioner may approach the Commissioner, Gujarat Housing Board by filing a representation and after giving an opportunity of hearing to him, the representation may be decided in accordance with law by the appropriate authority.

4. Considering the facts and circumstances of the case, as stated above, this petition is being disposed of with a liberty to the petitioner to make a representation to the Commissioner, Gujarat Housing Board within two weeks from today. In case, such representation is made by the petitioner, the Commissioner, Gujarat Housing Board is directed to decide the same in accordance with law within a period of two months from the date of the receipt of the representation after giving an opportunity of hearing to the petitioner and a copy of the order will be sent to the petitioner within a week from the date of the decision taken. Ad-interim relief granted by this Court will continue till the decision is taken by the appropriate authority of the Gujarat Housing Board. In case the petitioner has any grievance against the decision of the Commissioner, Gujarat Housing Board, the petitioner would be at liberty to take recourse available.

Direct Service is permitted.

[KUNDAN SINGH, J.]

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